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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,358	05/31/2001	Dennis B. Brown	45824-01012	3992

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EXAMINER
PASCUA, JES F

ART UNIT	PAPER NUMBER
3727	

DATE MAILED: 03/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/871,358	BROWN ET AL.	
	Examiner	Art Unit	
	Jes F. Pascua	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 August 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33 and 36-44* is/are pending in the application.

4a) Of the above claim(s) *17-26,28,29,31-33,37 and 44* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16,27,30,36 and 38-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *4 & 6* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group V, 1-16, 27-30, 36 and 38-43, in Paper No. 8 is acknowledged. The traversal is on the ground(s) that the claims illustrate three types of embodiments instead of the six embodiments indicated by the Examiner and none of the three types of embodiments include mutually exclusive species. This is not found persuasive because the claims include limitations directed to the six embodiments and infringement of any one of the six embodiments would not result in infringement of the remaining embodiments.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4, 5, 6, 7, 10, 11, 12, 13 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, "said first section of each of said first top and said second top" lacks antecedence.

In claim 5, "said second section of each of said first top and said second top" lacks antecedence.

In claim 30, a second base has not been previously defined to warrant the language "a third base".

Claims that have not been specifically mentioned are rejected since they depend from claims rejected under 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, 3, 8, 36, 38, 39 and 42 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Winchell.

6. Claims 1, 2, 3, 8, 36, 38, 39, 40, 41, 42 and 43 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Larkin '267.

Regarding claim 41, since ice cubes can come in a variety of shapes and sizes, the spout 24 of Larkin '267 is inherently "sized for communicating ice cubes into" the liquid retaining volume.

7. Claims 1, 2, 3, 4, 5, 8, 36, 38, 39 and 42 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sullivan. See Fig. 5.

8. Claim 1, 2, 3, 8, 14, 15, 36, 38, 39 and 42 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Sperko et al.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winchell, Larkin '267 or Sperko et al.

Winchell, Larkin '267 and Sperko et al. each disclose the claimed invention except for the perimeter seal having a depth from about ¼ of an inch to about 1 inch. It would have been an obvious matter of design choice to form the perimeter seal of

Winchell, Larkin '267 or Sperko et al. with a depth of about ¼ of an inch to about 1 inch , since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

11. Claims 27, 38, 39, 40, 41, 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Motsenbocker in view of the "TFO Product Sheet".

Motsenbocker discloses the claimed device except it is unclear how the tube 16 is secured to the perimeter of the pouch. The "TFO Product Sheet" discloses that it is known in the art to secure a tube to the perimeter of an analogous pouch by attaching the tube to a spout having a base that is sealed into the perimeter of the pouch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pouch of Motsenbocker with the spout of the "TFO Product Sheet", in order to secure the tube to the perimeter of the pouch.

12. Claims 1, 2, 3, 16, 38, 39 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cattach.

Cattach discloses the claimed invention; especially the first spout sealed in the perimeter seal. However, Cattach does not show the pouch having a second spout sealed in the perimeter seal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a second spout sealed into the perimeter seal of the Cattach pouch, since it has been held that mere duplication of the

essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Allowable Subject Matter

13. Claims 6, 7, 10, 11, 12, 13 and 30 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 703-308-1153. The examiner can normally be reached on Mon.-Thurs..

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1078.

Jes F. Pascua
Primary Examiner
Art Unit 3727

JFP
March 12, 2003